## BANK BUMIPUTRA BHD., EX PARTE

HIGH COURT MALAYA, SHAH ALAM
MAHADEV SHANKAR J
[ORIGINATING SUMMONS NO. 24-90 OF 1991]
19 MARCH 1991

***LAND LAW:*** *Charge - Auction sale - Application by chargee to stop the sale by the Land Administrator - Role of Land Administrator - Effect of an order for sale - When order for sale ceases to have effect - National Land Code 1965, ss. 33, 263, 266, 417, 418.*

The applicant bank had obtained an order for sale of the land belonging to the respondent. The sale was to be held on 19 January 1991. On that day, the respondent applied to have the sale postponed to six months to enable it to settle their debt, but the Land Administrator only granted a month's extension, to 18 February 1991. A notice under s. 264(3) of the National Land Code (the NLC) was issued to that effect. Meanwhile, the parties continued their negotiation and it was agreed that the respondent pay RM1.6 million in full settlement to the applicant on or before 30 March 1991. On the basis of this settlement, the applicant sought to stop the sale fixed for 18 February 1991. The Land Administrator resisted the applicant's application.

**Held:**

**[1]** An order made by the Land Administrator under s. 263 of the NLC is a final order. Once made, the Land Administrator was *functus officio*, except with regard to his discretionary power to postpone the sale if he thought it expedient to do so.

**[2]** An order for sale can only cease to have effect when the chargor tenders the full amount of the debt, expenses and costs as specified in s. 266(2) of the NLC. The tender must be made to the Land Administrator, not to the chargee.

**[3]** An appeal under s. 418 of the NLC against the refusal to postpone a sale can only succeed if it can be shown that the discretion of the Land Administrator was unjudiciously exercised. Such an appeal does not operate as a stay of execution.

*[Application dismissed with costs.]*

**Legislation referred to:**
Government Proceedings Act 1956, s. 29(2)
National Land Code 1965, ss., 263(3), 264(3), 266(1),(2), 417(1), 418

### JUDGMENT

**Mahadev Shankar J:**

This is an application to suspend or to postpone to a date to be agreed between chargee and chargor an auction sale fixed by the Land Administrator to take place on 18 February 1991.

In 1982 Celtra Corporation Sdn. Bhd. (Celtra), charged one lot of its land in Kelang (the said land) to Bank Bumiputra Malaysia Bhd. (the bank) for an overdraft of RM400,000.

On 11 December 1990 the bank obtained an order for the sale of the land from the Land Administrator who fixed the sale for 19 January 1991. On that day Celtra requested for a postponement of the sale for three to six months to enable Celtra to settle their indebtedness. The Land Administrator however only postponed the sale to 18 February 1991 despite the entreaties of both the bank and Celtra for more time. On 19 January 1991 the Land

Administrator issued a written notice under s. 264(3) of the National Land Code that the sale was postponed to 18 February 1991. This notice was formally served on the bank's solicitors on 2 February 1991.

Meanwhile Celtra and the bank proceeded to have some negotiations amongst themselves whereby on 29 January 1991 Celtra agreed to pay and the bank agreed to accept RM1,600,000 in full settlement provided this sum was paid to the bank on or before 30 March 1991. If not paid, the bank reserved its rights against Celtra.

On this basis and allegedly because a postponement of the sale would not prejudice anybody the bank's solicitors filed this *ex parte* application on 13 February 1991 and supported it with a certificate of urgency because they wanted to stop the sale fixed for 18 February 1991.

Fortunately the Land Administrator got to know of this application, filed an affidavit-in-reply, and resisted it. After hearing submissions I dismissed the application for the reasons which now follow.

The order of sale was made on 11 December 1990 pursuant to s. 263 of the National Land Code (NLC).

Such an order is a final order. Once it was made the Land Administrator was *functus officio,* except with regard to his power under s. 263(3) to postpone the sale if he thought it expedient to do. This is a discretionary power. The order for sale could only cease to have effect provided the chargor tendered the full amount of the debt, expenses and costs as specified in s. 266(2) of the NLC. But such tender by s. 266(1) of the NLC must be to the Collector, not be it noted to the chargee.

I have previously dealt with the legal consequences of these orders in Johor Bahru originating motion no. 17 of 1985 between *Oriental Bank Berhad v. Pentadbir Tanah Daerah Segamat and Syarikat Haji Mohamed Salleh Zainuddin* (Unreported). So did my brother Y.A. Datuk Wira Wan Yahya bin Pawan Teh in Shah Alam Originating Motion No. 25-25-90 between *MBf Finance Bhd. v. Pentadbir Tanah Daerah Gombak* where he said:

> ... The peremptory provisions of s. 266 read together with s. 33 of the National Land Code make it imperative for the Collector after making an order for sale under s. 263 to proceed to conduct an auction sale of the land in accordance with s. 265. Once an order of sale has been made, the chargor is given the only option under s. 266 to tender before the completion of the sale the amount due to the chargee plus any other sums due as referred to under subsection (2) of s. 266. This option to redeem the land under sale is intended to apply to the chargor only and does not include a chargee who had changed his mind for one reason or another. Even after the amount due has been tendered, the Collector is not empowered to alter or cancel the order. The actual term used in s. 266(1) that the order shall thereupon 'cease to have effect' to my mind must mean that the order is to discontinue or be discharged by operation of law and not by any act of cancellation by the Collector.

Section 418 of the NLC provides for appeals against any decision of the Collector. By s. 418(3) the definition is an open ended one and would certainly cover a decision by way of a refusal of an application to postpone a sale. However for such an appeal to succeed it must be shown that the discretion was unjudiciously exercised. Since appeals do not operate as a stay of execution, an application for a stay will be straddled with the same problems.

I have noted with interest the learned Legal Advisor's submission that an application to Court to suspend or postpone the auction is in reality an application for an indirect injunction which runs counter to s. 29(2) of the Government Proceedings Act. With respect however,

s. 417(1) of the NLC specifically empowers the Court to direct the Collector to do all such things as may be necessary to give effect to any order made in any proceedings relating to land. There is no scope here for the application of that section.

I therefore reiterate that this application is dismissed with costs.

Also found at [1992] 1 CLJ 100